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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-976

TED F. DUNHAM, JR., *ET AL.*,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONERS' SUPPLEMENTAL MEMORANDUM

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PETITIONERS' SUPPLEMENTAL MEMORANDUM

Pursuant to Rule 24(5), Rules of the Supreme Court of the United States, petitioners submit this supplemental memorandum to inform this Court that, upon the Government's motion made April 14, 1975, the District Court, to whom the fourth trial of petitioners' alleged co-conspirator, Edward Grady Partin, had been assigned, dismissed Count Five. This was the last remaining count, as Partin had previously not been convicted on the four other counts.*

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* While petitioners do not know why the Government (on the eve of trial) moved to dismiss the prosecution against Partin, certainly, despite the representation of the Government in its Brief in

(Continued)

Thus, petitioner Dunham is now incarcerated as being guilty of conspiring with Partin, but Partin is not guilty, nor can he be found guilty, of conspiracy with Dunham as to any of the counts in the Indictment (see Petition, p. 4 n. 2 and Petitioners' Reply, p. 8). This injustice compounds the undisputed fact that the verdicts on which petitioners stand convicted did not describe any "offenses" proscribed by Congress. Hence, petitioners have been deprived of due process of law as the result of fundamentally flawed verdicts describing two non-existent offenses of conspiracy to attempt.

CONCLUSION

For the foregoing reasons, petitioners request that the Petition for a Writ of Certiorari be granted and that the individual petitioner be released from prison pending a final disposition of the matter by this Court.

Respectfully submitted,

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* (Continued) Opposition (p. 2 n. 2), the facts that Partin had already been tried unsuccessfully three times on this indictment and that Partin was recently convicted by the Government in a related proceeding, may have influenced the Government in its decision.